



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

JOHN BEN SHEPPERD
ATTORNEY GENERAL

August 22, 1956

Hon. Robert S. Calvert
Comptroller
Capitol Station
Austin, Texas

Opinion No. S-213

Re: Construction of Paragraph (e)
of Section 2 and Paragraph (c)
of Section 2 $\frac{1}{2}$ of Article 7047c-1,
V.C.S., as to proper allocation
of funds after August 31, 1957,
to the State Available School
Fund and to the Comptroller's
enforcement fund.

Dear Mr. Calvert:

You request our opinion relative to the proper allocation of funds derived from the tax on cigarettes after August 31, 1957. After quoting Section 2 (e) and 2 $\frac{1}{2}$ (c) of Article 7047c-1, Vernon's Civil Statutes, you ask the following questions:

(1) What is the allocation to the State Available School Fund after August 31, 1957?

(2) Do the sections quoted above repeal the provisions of Section 30 of Article 7047c-1?

(3) If your answer to the second question is in the negative, then upon what part of the tax is the two and one-half per cent applicable after August 31, 1957?

Article 7047c-1 was originally enacted in 1935 and levied a three cents tax on each package of cigarettes. Two and one-half per cent of the gross revenue was set aside in a special fund for enforcement and one-fourth of the balance went to the Available School Fund and the other three-fourths to the Omnibus Tax Fund. The 51st Legislature amended Article 7047c-1 so as to levy an additional one cent tax on each package of cigarettes, which was to expire on August 31, 1957. All of this one cent additional tax was allocated to the State Hospitals and Special Schools Building Fund. No part of this additional one cent levy was set aside for enforcement purposes.

The 54th Legislature by Chapter 404, Article 1, Section 1, amended Section 2 of Article 7047c-1 without changing the four cent tax levy. It amended subdivision (e) thereof so that same now provides:

"(e) From the effective date of this Act, the net revenue derived from the tax levied by this Section 2 shall be allocated as follows: One-fourth ($\frac{1}{4}$) shall be credited to a special fund known as the State Hospitals and Special Schools Building Fund heretofore created by the Legislature; one-fourth ($\frac{1}{4}$) of the balance of the net revenue shall be credited to the State Available School Fund; and three-fourths ($\frac{3}{4}$) shall be credited to the Clearance Fund established by House Bill No. 8, Acts of the Forty-seventh Legislature, 1941, page 269, Chapter 184; provided, however, that not in excess of Five Million Dollars (\$5,000,000) shall be credited to the State Hospitals and Special Schools Building Fund for the fiscal year ending August 31, 1955, and not in excess of Five Million Dollars (\$5,000,000) for each fiscal year thereafter, through and including the fiscal year ending August 31, 1957, shall be credited to such fund. Any balance in excess of such Five Million Dollars (\$5,000,000) in any fiscal year shall be transferred to and become a part of the State Hospital Fund heretofore created by the Legislature, which is and shall be the same State Hospital Fund as provided for in House Bill No. 3 of the First Called Session of the Fifty-first Legislature.

"After August 31, 1957, all revenue from taxes levied by this Section except that allocated to the State Available School Fund shall be credited to the General Revenue Fund of the State.

"This Section shall supersede the provisions of the Section 2 contained in subdivision (b) of Section 1 of House Bill No. 2, Chapter 1, Acts, First Called Session, Fifty-first Legislature."

The 54th Legislature also amended Article 7047c-1 by adding a new section to be known as Section 2 $\frac{1}{2}$ which levies an additional tax of one cent on each package of cigarettes. Subdivision (c) of said Section 2 $\frac{1}{2}$ reads as follows:

"(c) From the effective date of this Act the net revenue derived from the tax levied under this Section 2- $\frac{1}{2}$ shall be credited to the General Fund of this State. Provided, no portion of the revenues derived under this Section 2- $\frac{1}{2}$ shall be set aside to any fund for the administration and enforcement of the cigarette tax law of this State. Provided further, the net revenues collected under this Section 2- $\frac{1}{2}$ may be credited daily to the Clearance Fund heretofore referred to in this Act and on the first day of each month following the collection of the net revenues derived under this Section 2- $\frac{1}{2}$ the said net revenues shall be credited to the General Fund; it being specifically under-

stood that no portion of the said net revenues of this Section 2- $\frac{1}{2}$ shall remain or be distributed under the provisions governing the said Clearance Fund."

Section 30 of Article 7047c-1 has not been amended since its enactment in 1935 and reads, in part, as follows:

"Sec. 30. That two and one-half per cent ($2\frac{1}{2}\%$) of the gross amount of taxes, permit and license fees and other funds derived under the provisions of this Act shall be set aside in a special fund subject to the use of the Comptroller and so much of said fund as may be necessary shall be expended in the administration and enforcement of the provisions of this Act . . . "

We will first answer each of your questions and then state our reasons therefor.

Answer to question two:

The amendments of Article 7047c-1 do not repeal the provisions of Section 30 of said article.

In 1950 the Legislature amended Article 7047c-1 by adding Section 30a, providing for allocation of two and one-half per cent of three-fourths of the gross revenue for administration and enforcement of the Act until August 31, 1957. This amendment superseded Section 30 until August 31, 1957, but left it in effect after that date.

None of the amendments expressly repeal Section 30 and repeals by implication are never favored. A large amount of the State revenue is derived from the cigarette tax and we do not believe that the Legislature intended this revenue to become impaired by lack of funds to administer and enforce the payment of the tax.

Answer to question three:

Two and one-half per cent of the gross revenue derived from the cigarette tax levied in Section 2 of Article 7047c-1 is set aside in a special fund for enforcement purposes in accordance with Section 30.

Under the last amendment a tax equal to five cents is levied against each package of cigarettes. Section 30 expressly states that two and one-half per cent of the gross amount of taxes derived under the provisions of the Act shall be set aside in a special fund for the administration and enforcement of the Act. This provision standing alone would place two and one-half per cent of the whole five cents levy into this enforcement fund. However, Section 2- $\frac{1}{2}$ which levies a tax of one cent per package expressly states that the net revenue derived from the tax levied by Section 2- $\frac{1}{2}$ shall be credited to the General Fund and no portion thereof shall be

set aside to any fund for enforcement. This provision in Section 2 $\frac{1}{2}$ being a special provision will control over Section 30, which is a general provision.

Answer to question one:

Section 2 (e) after August 31, 1957, allocates to the State Available School Fund one-fourth of three-fourths of the taxes levied by said section, after the two and one-half per cent is placed in the enforcement fund.

Section 2 (e) only makes one allocation to the State Available School Fund. This allocation is made in the following language:

"From the effective date of this Act, the net revenue derived from the tax levied by this Section 2 shall be allocated as follows: .

"One fourth ($\frac{1}{4}$) shall be credited to a special fund known as the State Hospitals and Special Schools Building Fund heretofore created by the Legislature; one-fourth ($\frac{1}{4}$) of the balance of the net revenue shall be credited to the State Available School Fund; and three-fourths ($\frac{3}{4}$) shall be credited to the Clearance Fund. . . . "

The next paragraph in said section provides that "After August 31, 1957, all revenue from taxes levied by this Section except that allocated to the State Available School Fund shall be credited to the General Revenue Fund of the State." This language can only mean one thing and that is that all revenue that is allocated as stated above to any fund or funds other than the Available School Fund after August 31, 1957, shall be credited to the General Fund. To illustrate we will give the following example:

\$3,200.00 tax is collected under Section 2. Two and one-half per cent for enforcement amounts to \$80.00, leaving \$3,120.00 to be allocated. One-fourth of the \$3,120.00 presently allocated to hospitals and special schools will go to the General Revenue Fund after August 31, 1957. This one-fourth amounts to \$780.00. This leaves a balance of \$2,340.00. One-fourth of this \$2,340.00 is allocated to the State Available School Fund. Hence \$585.00 should be credited to the Available School Fund. The balance amounting to \$1,755.00 is to be credited to the General Revenue Fund. Thus all net revenue that was credited to all funds other than the Available School Fund under Section 2 prior to August 31, 1957, is allocated to the General Fund in accordance with the amended statute.

SUMMARY

The amendments of Article 7047c-1, V.C.S., do not repeal the provisions of Section 30 of said article.

Two and one-half per cent of the gross revenue derived from the cigarette tax levied in Section 2 of Article 7047c-1, V.C.S., is set aside in a special fund for enforcement purposes in accordance with Section 30.

Section 2 (e), after August 31, 1957, allocates to the State Available School Fund one-fourth of three-fourths of the remaining taxes levied by said section, after two and one-half per cent is placed in the enforcement fund.

APPROVED:

Yours very truly,

Elbert M. Morrow
Reviewer

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